

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

SHERRY CUNNINGHAM, an
Individual; GARY DAY, an individual;
JOSETTE DAY, an individual; and
DENISE THOMPSON, an individual,

Plaintiffs,

vs.

ALLEGAN COUNTY, a Governmental Unit;
and SALLY L. BROOKS, in her individual
and official capacity,

Defendants.

Case No.

Hon.

Removed from the Allegan County
Circuit Court
Case No. 24-68680-CZ

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DEFENDANTS' NOTICE OF REMOVAL

NOTICE IS HEREBY GIVEN, pursuant to 28 U.S.C. §§ 1331 and 1441, that the above-stated matter pending before the Circuit Court for the County of Allegan, Case No. 24-68680-CZ is removed to the United States District Court for the Western District of Michigan.¹ In support, Defendants state as follows:

I. BACKGROUND

1. On March 14, 2024, Plaintiffs Sherry Cunningham, Gary Day, Josette Day, and Denise Thompson (collectively “Plaintiffs”) filed this civil action in the Allegan County Circuit Court.

2. Upon information and belief, Defendants Allegan County, a Governmental Unit (the “County”), and Sally L. Brooks, in her individual and official capacity (“Brooks”) (collectively “Defendants”) were served on April 17, 2024.

3. Removal is timely pursuant to 28 U.S.C. § 1446(b), because Defendants have filed this Notice of Removal within 30 days of being served with the Summons and Complaint.

4. The time for Defendants to answer, move, or otherwise plead with respect to the Complaint has not yet expired.

5. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on Defendants are attached as **Exhibit A**.

6. Pursuant to 28 U.S.C. § 1446(d), Defendants are contemporaneously filing a Notice of Removal with the County Circuit Court.

¹ Defendants respectfully submit this Notice with full reservation of rights and without waiving any of their defenses under Federal Rule of Civil Procedure 12.

II. REMOVAL IS PROPER BECAUSE FEDERAL QUESTION JURISDICTION EXISTS

7. This Court has original jurisdiction over Plaintiffs' Complaint pursuant to 28 U.S.C. § 1331 and this action is removed to this Court by Defendants pursuant to 28 U.S.C. § 1446(a), which authorizes removal based on federal question jurisdiction.

8. Federal question jurisdiction exists over "civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

9. Here, Plaintiffs allege claims arising under 42 U.S.C. § 1983. (Compl. Counts I, V, VI, and VII)

10. Plaintiffs also alleges a claim that purports to arise directly from the Fifth Amendment to the U.S. Constitution. (*Id.*, Count II)

11. Therefore, federal question jurisdiction exists. *See* 28 U.S.C. § 1331.

III. THE COURT HAS SUPPLEMENTAL JURISDICTION OVER THE STATE LAW CLAIMS

12. In cases in which this Court has original federal-question jurisdiction, this Court has "supplemental jurisdiction over all other claims that are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

13. Claims are part of the same case or controversy if they "derive from a common nucleus of operative fact." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966) ("[I]f, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole.").

14. Here, Plaintiffs' state law claims for inverse condemnation, violation of Article X, Section 2 of the Michigan Constitution, unjust enrichment, conversion, statutory conversion, and

claim and delivery all derive from the same alleged tax foreclosures and sales of properties allegedly owned by Plaintiffs that purportedly gave rise to proceeds exceeding the unpaid property taxes and associated fees, interest, and costs. (*See generally*, Compl.)

15. Venue is proper for removal to this Court under 28 U.S.C. § 1391 because the Allegan County Circuit Court, where the Complaint was filed, is a state court within the Western District of Michigan.

16. Pursuant to 28 U.S.C. § 1446(d), Defendants are filing a written notice of this removal with the Clerk of the Allegan County Circuit Court in Allegan County, Michigan, which along with this notice, is being served upon Plaintiffs' counsel.

IV. CONCLUSION

For the foregoing reasons, federal jurisdiction exists under 28 U.S.C. § 1331, supplemental jurisdiction exists under 28 U.S.C. § 1367, and removal is appropriate under 28 U.S.C. § 1441.

Respectfully submitted,

CLARK HILL PLC

Dated: May 6, 2024

/s/Charles A. Lawler

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2024, I electronically filed Defendants' Notice of Removal, with Exhibit A, with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

Respectfully submitted,

CLARK HILL PLC

/s/ Charles A. Lawler

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